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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

ANDREA GENE E ANGELO,

Defendant and Appellant.

F055675

(Super. Ct. No. 30447)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Merced County. Brian L. McCabe, Judge.

Susan K. Keiser, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, and Brian Alvarez and Leslie W. Westmoreland, Deputy Attorneys General, for Plaintiff and Respondent.

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*Before Wiseman, A.P.J., Cornell, J., and Gomes, J.

Appellant, Andrea Genee Angelo, pled no contest to child endangerment (Pen. Code, § 273a, subd. (a))¹ and admitted a great bodily injury enhancement. (§ 12022.7.) On May 9, 2008, the court sentenced Angelo to an aggregate seven-year term. On appeal, Angelo contends the court erred in imposing the great bodily injury enhancement. We will affirm.

FACTS

On the evening of April 27, 2006, Merced Police Officer Ryan Rasmussen arrived at Mercy Medical Center Community Campus in response to a call from a nurse regarding Angelo's nine-month-old daughter who was extremely malnourished. When he first saw the baby, she was just "skin and bone" and unresponsive. When they tried to open her eyes, they just rolled back in her head.

Angelo told Rasmussen that her daughter lived with her and her husband, Robert Angelo (Robert). Angelo also stated that her daughter had problems with constipation, she weighed approximately 7 pounds, and the most she had ever weighed was 12 pounds. According to Angelo, even though she fed her daughter formula, she started to lose weight four months earlier. When Rasmussen asked Angelo if she and her husband had an abusive relationship, Angelo bowed her head and said no. She also stated that none of her children, including her daughter, had been abused. As Rasmussen was placing Angelo under arrest, she stated, "I can't believe I let my daughter get this way."

Rasmussen spoke with Robert in front of the Angelo's house prior to arresting him. Robert told him that his daughter was a healthy baby girl and he did not think she was very sick. Angelo also stated that his daughter began losing weight about a month earlier.

¹ Unless otherwise indicated, all further statutory references are to the Penal Code.

Janice Olson, an emergency response social worker, spoke with Angelo on April 27, 2006. Angelo told her she was the primary care provider for her daughter and when she was not home she left her daughter in the care of her husband or her eight-year-old son. Angelo also stated that her daughter was fine and ate like a pig. When Olson asked her why she had not taken the baby to the doctor Angelo replied that Robert told her that if she did anything with the children he would take them and she would never see them again. At one point, Angelo said she should have gotten help for her daughter a long time ago.

Olson interviewed Robert at the Angelos' residence. Robert told her there was nothing wrong with his daughter, she consumed at least two to three bottles a day, she was standing on her own, and she was very active and wanted to play with other kids. Olson estimated that based on her birth weight of 6 pounds, Angelo's daughter should have weighed 12 pounds when she was brought to the hospital.

Dr. Donald Fields testified that Angelo's daughter weighed 5 pounds when she arrived at the hospital. When she was released 30 days later she had gained five pounds. Her medical diagnosis was failure to thrive. She suffered from low blood sugar, low phosphorus, low potassium, an infection in the bloodstream, atrophy of the brain, stunted growth, severe protein and calorie malnutrition, and refeeding disorder. The cause of these problems was that Angelo's daughter was not being fed and had not received the proper nourishment for several months. The course of treatment for Angelo's daughter was to start adding back the calories very slowly. In the four weeks before she was brought to the hospital, it would have been noticeable to a lay person that Angelo's daughter needed medical care.

On March 7, 2007, the district attorney filed an information charging Angelo and Robert with attempted murder (§§ 664/187) and felony child endangerment. Each count also alleged a great bodily injury enhancement as to Angelo and Robert and contained

several other allegations against Robert. On May 9, 2008, Angelo pled no contest to the child endangerment charge and admitted the great bodily injury enhancement in exchange for the dismissal of the remaining count and an enhancement and an indicated sentence of seven years, the middle term of four years on the child endangerment charge and a three year great bodily injury enhancement. However, the court agreed to issue a certificate of probable cause, and if the appellate court agreed that the enhancement was improperly imposed, Angelo's sentence would be modified to the aggravated term of six years on the child endangerment charge.

After taking her plea, the court sentenced Angelo to a seven-year term as per her negotiated plea.

DISCUSSION

Angelo contends: 1) the use of malnutrition to impose a great bodily injury enhancement on her child endangerment conviction is analogous to using an element of an offense to enhance the offense; 2) a great bodily injury enhancement cannot be imposed based on vicarious liability; and 3) there is no evidence that Angelo personally inflicted great bodily injury on her daughter. Thus, according to Angelo, the court erred when it imposed a great bodily injury enhancement. We will find that these contentions are not properly before us and that, in any event, there is no merit to them.

“Section 1237.5 provides: ‘No appeal shall be taken by the defendant from a judgment of conviction upon a plea of guilty or nolo contendere, or a revocation of probation following an admission of violation, except where both of the following are met: [¶] (a) The defendant has filed with the trial court a written statement, executed under oath or penalty of perjury showing reasonable constitutional, jurisdictional, or other grounds going to the legality of the proceedings. [¶] (b) The trial court has executed and filed a certificate of probable cause for such appeal with the clerk of the court.’ ‘Section 1237.5 is an exception to the general rule that appeals may not be brought by defendants who have pleaded guilty or nolo contendere. This section provides the general rule that

defendants who have pleaded guilty must obtain a certificate of probable cause before they may bring an appeal.’ [Citation.]

““Thus, in this appeal, defendant may raise only those issues cognizable on appeal when a defendant obtains a certificate of probable cause under section 1237.5. ““Obtaining a certificate of probable cause [however] does not make cognizable those issues which have been waived by a plea of guilty.”” [Citation.] Under section 1237.5, “only ‘constitutional, jurisdictional, or other grounds going to the legality of the proceedings,’ survive a guilty plea.” [Citation.] ...

“““By pleading guilty, a defendant admits the sufficiency of the evidence establishing the crime, and is therefore not entitled to a review on the merits. [Citations.] ‘[I]ssues which merely go to the guilt or innocence of a defendant are “removed from consideration” by entry of the plea.’ [Citation.] Thus, claims involving sufficiency of the evidence [citation], ... have been held not cognizable on appeal following a guilty plea....””” (People v. Moore (2003) 105 Cal.App.4th 94, 99.)

Angelo’s contentions raise issues that go to Angelo’s “guilt or innocence” with respect to the great bodily injury enhancement. Therefore, these issues are not cognizable on appeal even though the court issued a certificate of probable cause. However, even if these issues were properly before us we would reject them.

“Section 273a provides for felony punishment where certain actions are committed ‘under circumstances or conditions likely to produce great bodily harm or death.’ A misdemeanor status is to those acts committed ‘under circumstances or conditions other than those likely to produce great bodily harm or death.’ For the felony punishment there is no requirement that the actual result be great bodily injury. The statute is intended to protect a child from an abusive situation in which the probability of serious injury is great.... [¶] ... section 12022.7 provides for the imposition of enhanced punishment upon persons inflicting ‘great bodily injury’ during the commission of felonies.” (People v. Jaramillo (1979) 98 Cal.App.3d 830, 835-836 (Jaramillo).)

In *Jaramillo*, after a bench trial, the court found the defendant guilty of felony child abuse and found true a great bodily injury enhancement. On appeal, the defendant claimed that the great bodily injury enhancement had been improperly imposed because

great bodily injury was an element of his child abuse conviction. In rejecting this contention, the *Jaramillo* court stated,

“Appellant argues that section 12022.7 does not apply to felonies of which great bodily injury is an element. Therefore, imposition of the enhanced punishment was error. As pointed out however, earlier in this opinion, section 273a does not focus upon the actual injury produced by the abusive actions but rather upon whether or not the attendant circumstances make great bodily injury likely. Occurrence of great bodily injury is not necessary to find a violation of the section, therefore it is not an element of the offense. Appellant's argument must therefore fail.” (*Jaramillo, supra*, at p. 837.)

In accord with *Jaramillo*, we reject Angelo’s contention that the court erred in imposing a great bodily injury enhancement because it is an element of felony child abuse.

Nor is there any merit to Angelo’s claim that the record does not contain any evidence that she personally inflicted great bodily injury on her daughter or her suggestion that the enhancement here was imposed based on vicarious liability. “‘When, as here, a defendant challenges on appeal the sufficiency of the evidence to sustain the trial court’s finding that the prosecution has proven all the elements of the enhancement, we must determine whether substantial evidence supports that finding. The test on appeal is simply whether a reasonable trier of fact could have found that the prosecution sustained its burden of proving the enhancement beyond a reasonable doubt.’ [Citation.] In making this determination, we review the record in the light most favorable to the trial court's findings. [Citation.]” (*People v. Rodriguez* (2004) 122 Cal.App.4th 121, 129.)

Section 12022.7, subdivision (a) provides: “Any person who personally inflicts great bodily injury on any person other than an accomplice in the commission of a felony or attempted felony shall be punished by an additional and consecutive term of imprisonment in the state prison for three years.” “[T]he meaning of the statutory

language is clear: the enhancement applies only to a person who himself inflicts the injury.” (*People v. Cole* (1982) 31 Cal.3d 568, 572.)

Here, Angelo admitted to social worker Olson that she was her daughter’s primary caregiver. The court could reasonably find from Angelo’s admission and other evidence in the record that Angelo personally inflicted great bodily injury on her daughter by her failure to properly feed her, which resulted in her daughter suffering severe malnutrition. The Court did not err when it imposed a great bodily injury enhancement.

DISPOSITION

The judgment is affirmed.